

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1126 of 2002
in
SPECIAL CIVIL APPLICATION No. 1192 of 2002

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE K.A.PUJ

- =====
1. Whether Reporters of Local Papers may be allowed :
to see the judgements?
 2. To be referred to the Reporter or not? :
 3. Whether Their Lordships wish to see the fair copy :
of the judgement?
 4. Whether this case involves a substantial question :
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned :
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GUJARAT PRADESH PANCHAYAT PARISHAD & Ors.
Versus
STATE OF GUJARAT & Ors.

Appearance :-

1. LETTERS PATENT APPEAL No. 1126 of 2002
MR KG VAKHARIA with
MR TUSHAR MEHTA for Appellants
MR SN SHELAT ADVOCATE GENERAL with
MS SRUTI TRIVEDI AGP for Respondents No. 1-2
RULE SERVED for Respondent No. 3
-

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 14/06/2005

CAV JUDGEMENT (Per : HON'BLE MISS JUSTICE R.M.DOSHIT)

This Appeal, preferred under Clause 15 of the Letters Patent, arises from the common judgment and order dated 25th October, 2002 passed by the learned Single Judge in Special Civil Applications No. 1192 of 2002 and

Nos. 4995 & 4997 of 2002.

The appellant no.1 is the Gujarat Pradesh Panchayat Parishad, a society registered under the Societies Registration Act, 1860. The appellants no.2 & 3 are the Sabarkantha District Panchayat [hereinafter referred to as, "the Panchayat"] and the President thereof. The appellants preferred the above referred Special Civil Application No. 1192 of 2002 under Article 226 of the Constitution of India. The appellants prayed for a declaration that the District Panchayat, an elected body, is the executive head of the District Panchayat and the District Development Officer, ex officio Secretary to the District Panchayat is required to perform his functions in accordance with the directions issued by the District Panchayat or the President in exercise of its power under Section 83 of the Gujarat Panchayats Act, 1993 [hereinafter referred to as, "the Act"]; and for a direction to the District Development Officer to comply with the direction issued by the President of the Panchayat under his order dated 13th December, 2001. The said order dated 13th December, 2001 has been issued by the President of the Panchayat directing the District Development Officer to refer to the President, all matters pertaining to recruitment, appointment, transfer, deputation, promotion, posting, etc. of the officers of the District Panchayat for consultation.

The learned Single Judge has reproduced the relevant constitutional and statutory provisions and has dealt with the arguments of the learned advocates in extenso. It has been held that, "...It is thus obvious that the Legislature did not contemplate that super imposing role for the President of the District Panchayat which it contemplated for the Sarpanch for matters within the domain of the village panchayat." As to the respective roles of the District Panchayat and the District Development Officer, the learned Single Judge has held, inter alia, that, "...The executive power of the District Panchayat are not vested in the President of the District Panchayat, unlike the vesting of the executive powers of the village panchayat in the elected Sarpanch.. The executive powers of the District Panchayat are vested in the District Development Officer and the exercise of these powers is subject to the orders, if any, of the President of the District Panchayat or the District Panchayat, as the case may be. But, this does not mean that the District Development Officer is required to obtain prior orders of the President or the District Panchayat.. ...While the powers and functions of the President of the District Panchayat do include watching over the financial and executive administration of the panchayat and exercising administrative supervision on the District Development Officer for securing implementation of resolutions or decision of the panchayat or any committee thereof, such watching over and exercising administrative supervision does not mean taking decisions in matters of day to day administration or in the matters of appointment, transfer or other conditions of service of the panchayat employees or of officers posted by the State Government under the

panchayats. The Act and the Rules, therefore, do not contemplate that the District Development Officer is required to obtain prior approval of the President of the District Panchayat or of the District Panchayat before taking decisions in executive matters, much less in matters which are entrusted to the District Development Officer by the statutory rules under Section 227 of the Act."

Mr. Vakharia has submitted that the Panchayat was and is a local self government. The status of the Panchayat as a local self government has now been reinforced by insertion of Part-IX to the Constitution by 73rd Amendment of the Constitution. He has particularly relied upon Article 243-G. He has also relied upon the relevant provisions of the Act, particularly Sections 83, 161 & 162 of the Act. He has strenuously urged that the executive powers conferred upon the District Development Officer under Section 162 of the Act are specifically made subject to the directions issued by the District Panchayat. He has submitted that exercise of the executive powers by the District Development Officer shall, therefore, be in accordance with the general or special orders that are issued by the District Panchayat or its President. In the present case, the President of the Panchayat has issued specific order to consult him in the matters of recruitment, transfer, posting, deputation, etc. of the servants of the Panchayat which the District Development Officer is obliged to follow. However, in utter disregard of the directions issued by the President, the District Development Officer has been performing the executive functions according to his will without consultation with the President of the Panchayat. Mr. Vakharia has submitted that the elected panchayat is the executive head of the District Panchayat and has the supreme executive power. The span of activities of the panchayat is extensive and varied. A District Development Officer is a Secretary to the District Panchayat. The elected panchayat is, therefore, required to perform its functions through the District Development Officer. The District Development Officer, therefore, shall perform his administrative functions in consonance with the directions issued by the Panchayat or the President. Unless the District Development Officer carries out the directions issued by the Panchayat or the President, the elected panchayat will not be able to function as local self-government. Eventually, the purpose of the Constitutional Amendment and the Act shall be frustrated. As to the scope of the words, "subject to the orders, if any, of the President or of the District Panchayat" occurring in section 162 of the Act, Mr. Vakharia has relied upon the judgments of the Hon'ble Supreme Court in the matters of Harbhajan Singh vs. Press Council of India & Ors. [2002 (3) SCC 722]; of Dr. Mahachandra Prasad Singh vs. Chairman, Bihar Legislative Council & Ors. [2004 (8) SCC 747]; of Mathuradas Mohanlal Kedia & Ors. v. S.D Munshaw & Ors. [AIR 1981 SC 53]; of Municipality of Anand v. State of Bombay & Ors. [AIR 1962 SC 988] and of State of Bihar & Anr. vs. J.A.C. Saldanna & Ors. [AIR 1980 SC 326]. He has also relied upon the decision of the Division Bench of this

Court [Coram : PN Bhagwati, C.J & N.K Vakil, J.] in the matter of The Anant Mills Company Limited v. The Municipal Corporation of City of Ahmedabad & Ors. [Special Civil Application No. 662 of 1968 & 179 other matters decided on 14th/27th October, 1969]

The Appeal is contested by the learned Advocate General Mr. Shelat. At the outset, Mr. Shelat has submitted that though the State Government does not agree that the District Development Officer is required to seek previous approval or permission of the District Panchayat or its President for orders made by him in exercise of the powers conferred upon him by the provisions contained in the Act or the Rules made thereunder; with respect to transfer of the Panchayat servants, the District Development Officers do consult the respective District Panchayat or its President. He has submitted that the District Development Officer is a statutory office conferred with the executive powers of a District Panchayat. For exercise of such powers, the State Government has made rules under its rule making authority. The statutory powers conferred upon the District Development Officer have to be performed by the District Development Officer in accordance with the relevant rules. The District Development Officer, therefore, is not required either to take previous permission or approval of the President or the District Panchayat. He has submitted that the words, "subject to the orders, if any, of the President or of the District Panchayat" occurring in Section 162 do not mean that for each and every order made by the District Development Officer in exercise of power conferred upon him under Section 162 of the Act or under the rules made under the Act, the District Development Officer is required to take previous sanction or approval of the President or the District Panchayat. He has submitted that these words empower the president and the District Panchayat to issue direction to the District Development Officer to ensure that the functions of the District Development Officer are performed in accordance with the statutory provisions and in the best interest of the public. In other words, the orders of the President of the District Panchayat referred to in Section 162 of the Act would succeed the actions of the District Development Officer. Such orders need not precede the actions of the District Development Officer. In support thereof, he has relied upon the judgment of the Hon'ble Supreme Court in the matters of Subramaniam Shanmugham v. M.L Rajendran & Ors. [AIR 1987 SC 2166]; of State of Rajasthan & Ors. vs. Shri Noor Mohammad [AIR 1973 SC 2719]; of Rai Vimal Krishna & Ors. v. State of Bihar & Ors. [JT 2003 (5) SC 333]; of Bashiruddin Ashraf v. The Bihar Subai Sunni Majlis-Awaqf & Anr. [AIR 1965 SC 1206]; of Chief Forest Conservator [Wild Life] & Ors. vs. Nisar Khan [AIR 2003 SC 1867]. He has also relied upon the Principles of Statutory Interpretation by Justice G.P Singh [9th edition].

As recorded hereinabove, the learned Single Judge has dealt with the statutory provisions and the aforesaid authorities in extenso. We, therefore, shall not repeat the same. The principles of interpretation of statute

discussed in the said judgments are followed in the present case.

Provisions concerning the Panchayats contained in Part-IX of the Constitution have been inserted in the Indian Constitution under the Constitution [73rd Amendment] Act, 1992. In consonance with the said constitutional provisions, the Government of Gujarat has substituted the then prevailing, "The Gujarat Panchayats Act, 1961" by "The Gujarat Panchayats Act, 1993". Clause (d) to Article 243 of the Constitution defines "the Panchayat" to mean, "an institution [by whatever name called] of self-government constituted under article 243B, for the rural areas". Article 243B provides for constitution of Panchayats at the village, intermediate and district levels. Article 243E provides, inter alia, for the duration of Panchayats. Article 243G provides for powers, authority and responsibilities of Panchayats. The said article empowers the State Legislature to make law, to endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and for such devolution of powers and responsibilities upon the Panchayats, at the appropriate level, subject to such conditions as may be specified, with respect to (a) the preparation of plans for economic development and social justice; (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule. The Eleventh Schedule enlists the functions to be performed by the Panchayats. The said functions cover several activities right from drinking water to agriculture, land development, irrigation, water management, animal husbandry, fisheries, minor forest produce, cottage industries, rural housing, roads, culverts, bridges, etc., rural electrification, non conventional energy sources, education, technical and vocational training, adult and non-formal education, libraries, cultural activities, markets and fairs, family welfare, women and child development, social welfare, welfare of the weaker sections, public distribution system, and maintenance of community assets. Article 243H empowers the State Legislature to make law, inter alia, to authorise the Panchayats to levy, collect and appropriate taxes, duties, toll and fees.

Section 3 of the Act provides for establishment of village panchayats for each village, a taluka panchayat for each taluka and a district panchayat for each district. Sections 8, 10 & 11 of the Act provide for constitution of village panchayats, taluka panchayats and district panchayats respectively. Section 83 of the Act enumerates the powers and functions of the President and the Vice-President of a District Panchayat. Section 154 of the Act enjoins a District Panchayat to make in the area within its jurisdiction and so far as the fund at its disposal will allow, reasonable provision in regard to all or any of the matters specified in Schedule-III. Part-I of Schedule-III to the Act enumerates matters in respect of which it is the duty of the District Panchayat to make provision. The matters

enlisted in Schedule-III cover various activities and functions relating to sanitation and health, public works, education and cultural activities, administration, community development, agriculture, animal husbandry, village and small scale industries, social welfare, establishment of relief centres in times of natural calamities and minor irrigation projects. Part-II of the said Schedule enlists the activities to be carried out by the Education Committee of a District Panchayat. Section 155 of the Act provides for the functions of Panchayats to promote health, safety, comfort or convenience and social, economic or cultural well-being of the inhabitants of the areas. Section 158 of the Act provides for the District Fund and Section 159 of the Act provides for application of the District Fund. Section 161 of the Act provides for Secretary and Officers and servants of District Panchayat. Sub-section (1) thereof provides that, "a District Development Officer posted under the panchayat, shall be Ex-Officio Secretary of the Panchayat." Section 162 of the Act provides for powers and functions of District Development Officer. Sub-section (1) thereof reads thus -

[1] Save as otherwise expressly provided by or under this Act, the executive powers of a district panchayat for the purpose of carrying out the provisions of this Act, shall vest in the District Development officer who shall subject to the orders, if any, of the President or of the district panchayat, as the case may be-

- (a) perform all the functions and exercise all the powers specifically imposed or conferred upon him by or under this Act, or under any law for the time being in force; and
- (b) lay down the duties of all officers and servants of the district panchayat."

Section 227 of the Act provides for constitution of Panchayat service in connection with the affairs of the Panchayats. Sub-section (5) thereof empowers the State Government to make rules regulating the mode or recruitment either by holding examinations or otherwise and conditions of service of persons appointed to the panchayat service and the powers in respect of appointments, transfers and promotions of officers and servants in the panchayats service and disciplinary action against such officers and servants.

Section 274 of the Act empowers the State Government to make rules for carrying out the purposes of the Act. In exercise of the aforesaid powers conferred by Section 274 read with sub-section (5) of Section 227 of the Act, the State Government has made rules governing

recruitment to various posts and cadres in panchayat service and for appointment, transfer, promotion, deputation of officers and servants of the Panchayat.

It is indisputable that a Panchayat is a local self-government. It was a local self-government under the then Gujarat Panchayats Act, 1961 and is a local self-government under the Act also. By insertion of Part-IX to the Constitution, the Parliament has recognized the status of a Panchayat as a local self-government but to the extent the powers are conferred by the State Legislature. It is apparent that the powers conferred upon the Panchayats are limited to certain executive functions of the State circumscribed by the statutory provisions contained in the Act and the rules made thereunder. The District Development Officer is an Officer of the State Government posted under a district panchayat to carry out the functions of the Panchayat in the manner and in accordance with the statutory provisions contained in the Act and the rules made thereunder. As to the recruitment, appointment, posting, transfer, promotion, deputation, etc. of the Panchayat's servants, it should be noted that they are governed by the statutory rules made in that behalf. Under the said statutory rules, it is the District Development Officer or the Deputy District Development Officer who is empowered to make orders in accordance with and in the manner prescribed under the relevant rules. We are of the opinion that the District Panchayat or the President of the Panchayat cannot have a right to issue direction or order with respect to the functions required to be performed by the District Development Officer under the authority of the statutory provisions. However, the District Panchayat or its President may issue orders, if required, to ensure that the said statutory functions are performed by the District Development Officer in accordance with and in the manner prescribed in the relevant rules.

The expression "subject to the orders, if any, of the President or of the District Panchayat as the case may be" has been interpreted in the aforesaid judgments either to mean that the authority shall be exercised in accordance with the orders issued in that behalf or to mean that the concerned authority may issue order, if necessary, after the authority is exercised. Whether such order should precede the exercise of the authority or should it succeed the exercise of authority shall depend upon the nature of power and the context in which the power is conferred upon the concerned authority. In the present case, as the administrative powers of the District Panchayat are expressly conferred upon the District Development Officer under the Act as well as under the Rules made thereunder to us, it appears that the expression, "subject to the orders, if any, of the President or of the District Panchayat as the case may be" occurring in Section 162 (1) of the Act is not capable of a construction that in all cases the District Development Officer shall consult the District Panchayat or its President or seek previous approval or sanction of the District Panchayat or the President of the Panchayat

before any order is made by him. If the said expression were construed in the manner as suggested by Mr. Vakharia; the District Development Officer is required to perform his statutory functions in accordance with the directions issued by the District Panchayat or the President; it would amount to abdication of power by the District Development Officer or usurpation of power by the District Panchayat or the President, as the case may be. There cannot be gainsaying that the statutory powers conferred upon any authority are, in absence of an express or implied provision to the contrary, required to be performed by such authority alone in accordance with the statutory provisions and in no other manner. We, therefore, agree with the learned Single Judge that the District Development Officer is not required to seek previous approval or permission of the District Panchayat or its President. However, the District Panchayat or the President of the Panchayat shall have powers to issue direction to the District Development Officer to bring his actions within the constitutional or statutory frame and in accordance with the economic plan.

In view of the above discussion, the Letters Patent Appeal is dismissed. The parties shall bear their own cost.

{Ms. R.M Doshit, J.}

{K.A Puj, J.}

AFTER PRONOUNCEMENT OF THE JUDGMENT

Learned advocate Mr. Tushar Mehta requests that the interim order operating pending the Appeal be continued for eight weeks. The request is rejected.

{Ms. R.M Doshit, J.}

{K.A Puj, J.}

Prakash*